IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
APPEAL NO.201 OF 2006
IN
COMPANY APPLICATION NO.308 OF 2006
IN
COMPANY PETITION NO.352 OF 1996

Lakshmi Uday Rao ...Appellant.
V/s.
Raksha Kirit Gosher & Ors. ...Respondents.

Ms. Rajani Iyer with Mr.Anand Poojari for the Appellant.

Mr.Shyam Divan Senior Advocate, with Mr. Darshan Mehta i/b Dhru Liladhar & Co. for Respondent No.1.

Ms.Laxmi Murli for Respondent Nos.2 to 6.

CORAM: H.L.GOKHALE &
S.R.DONGAONKAR, JJ.
DATE : 17th April, 2006.

P.C.:

1. Heard Ms.Iyer in support of this appeal. Mr.Divan, Senior Advocate appears for respondent no.1 and Ms.Laxmi Murli appears for respondent nos.2 to 6.

2. This appeal is filed against the order passed by the learned single judge on 13th January, 2006 in Company Application No.308 of 2006 which the appellant had moved before the learned Single Judge and which is pending. The father of the appellant, Mr.Srinivas Rao was a partner alongwith some others in running the business of the 2nd respondent-restaurant. One of the partners was respondent

no.1. Respondent no.1 filed Company Petition No. 352 of 1996 under Sections 582 and 583 of the Companies Act for winding up of this partnership firm. In that proceedings consent terms were arrived at when two sons of this Srinivas Rao and wife were joined as parties. That was done after the demise of Srinivas Rao. Amongst others, it was agreed in Clause 4 of the consent terms that Rs.87 lakhs were to be paid to respondent no.1 and/or Rs.50,000/- per month. In the event of failure to make payment of these amounts, the liquidator would stand appointed for that business. Since those payments were not made, orders were passed subsequently by the Company Judges on 3rd February, 2005 appointing liquidator and then again on 30th June, 2005 directing liquidator to take physical possession. Both the orders were left undisturbed by the Appellate Court and thereafter by the Apex Court in Petition for Special Leave (Civil) No.26132 of 2005 passed on 9th January, 2006.

2. The appellant, herein, in the meanwhile, filed the Company Application which was affirmed on 2nd January, 2006. It was pointed out that she was married daughter of Mr.Srinivas Rao and that she is staying far away in Vijaywada and that her share is excluded. She was not even joined in the proceedings after demise of Mr.Srinivas Rao and, therefore, she has made various prayers in the

company application including prayer for setting aside original consent terms and then the appointment of liquidator, etc. It is on that application that the impugned order came to be passed.

3. Mr.Divan, learned counsel appearing for Respondent No.1, points out that all these orders became necessary basically because other heirs of Srinivas Rao who were joined as respondents, not honouring the commitment made under the consent terms. He points out that the learned Single Judge has permitted the Official Liquidator to appoint third party as his agent to run the firm. He points out that in fact the interest of the appellant has been taken care of by directing that the assets of the firm not to be distributed.

4. Ms.Iyer appearing for the Appellant states that the father-in-law of the appellant is in the restaurant business. She is willing to give her bid. She will be permitted to give her bid. The order passed does not prejudice her interest as her main application is pending before the learned Single Judge. With this clarification, we dismiss this appeal.

(H.L.GOKHALE,J.)

(S.R.DONGAONKAR, J.)